IN RE TAI CHOI YU

HIGH COURT SABAH & SARAWAK, MIRI
IAN HC CHIN J
[SUIT NO: 22-17-96 (MR);
ORIGINATING MOTION NO: 25-03-96 (MR);
ORIGINATING SUMMONS NO: 24-05-96 (MR)]
19 DECEMBER 1998

CIVIL PROCEDURE: *Contempt of court - Counsel's allegations of bias and partiality of judge due to judge's finding against counsel in earlier case - Whether justified - Whether counsel succeeded in showing that judge would be biased and partial in future cases handled by counsel*

CIVIL PROCEDURE: *Contempt of court - Counsel's allegations of bias and partiality - Imputation of judicial misconduct - Whether a hypothetical evaluation or conjecture*

CIVIL PROCEDURE: *Action - Disqualification of judge - Judge's finding of credibility against witness - Whether a ground for disqualification in another unrelated case in which same witness appears*

CIVIL PROCEDURE: *Jurisdiction - Court - Whether court had jurisdiction to initiate contempt proceedings on its own motion*

CIVIL PROCEDURE: *Action - Abuse of process - Whether finding against counsel was an abuse of process as it did not bear registration number and intitulement*

In an earlier case, the advocate and solicitor ('the advocate') herein, was found to have been guilty of contempt of court by virtue of his application to have the instant judge ('the judge') disqualified on the grounds of bias and partiality. It was the advocate's case that the judge had made defamatory remarks against him both as a person and in his professional capacity as a lawyer in the judgment in that earlier case ('the *Takang* case') wherein the advocate had testified as a witness. The advocate claimed that as the judge had ruled unfavourably on his credibility as a witness in that said case, the judge would now and in future cases in which the advocate acted for a party, be biased or partial against him, and as a result would also be biased or partial against his clients.

The judge had found that the advocate's allegations of bias and partiality to be without any basis at all and that they implied that the judge would be deciding cases without regard to the evidence and the law, in other words, without regard to where the truth lay. The judge then found the advocate to

be in contempt of court as such allegations were an imputation of judicial misconduct with the intention of impairing the public confidence in the administration of justice. The advocate was then given the opportunity to decide what representation he wished to make before the penalty was imposed on him.

In this instance, the advocate raised several issues, amongst which were, whether the court had the jurisdiction to initiate contempt proceedings on its own motion, and whether the finding of imputation of judicial misconduct was a hypothetical evaluation or a conjecture because it had yet to take place, and therefore, could not be in contempt of court.

Held:

[1] Based on the case of *Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd & Ors*, the court had the jurisdiction to initiate contempt proceedings on its own motion. Further, although the matter could have been referred to the disciplinary committee under the Sarawak Advocates Ordinance, the High Court still had the power to deal with contempt on its own motion, irrespective of the existence of the said disciplinary committee.

[2] On the issue that the finding against the advocate was an abuse of the process of the court as it did not bear a registration number and a proper intitulement, this could be met with the answer that the process was on the court's own motion and it arose out of three matters which were cited. There was no law which required such a motion to bear a registration number or an intitulement.

[3] It was not hypothetical or conjecture but a natural consequence of any allegation of bias or partiality against a judge that the public confidence in the administration of justice will be impaired.

[4] The contention that there was a lack of specific charge had no merit because the details had been set out in the finding.

[5] In view of *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors*, the advocate must justify the allegations of bias or partiality. If by his written submission, the advocate meant to contend that whatever the facts or circumstances of a case, any application for disqualification on grounds of bias or partiality could never amount to a contempt of court, then *Hock Hua* above states that such could not be the law.

[6] On the issue that the advocate was entitled to make the present application having previously made about a dozen other such

applications, this was clearly against *Hock Hua*, as based on that case, there must be justification for making the application, and that it was not dependant on the number of previous applications made.

[7] The advocate did not demonstrate to the court how the judge's finding in the *Takang* case would mean that the judge would in future be biased or partial against him, and that the judge's bias or partiality against him would be "transferred" to his clients though those cases had nothing to do with the said case.

[7a] The judge's finding of credibility of a witness in one case cannot be a ground for the judge's disqualification in a different unrelated case in which the same person will appear as a witness. Further, in the present cases in which the judge's disqualification was sought for, the advocate was not a witness but only an advocate acting for the parties concerned. Even if the advocate was going to be a witness in the said cases, the judge would still be qualified to hear the cases and rule on his credibility again guided by the facts and law therein. Thus, this went to show how baseless and unjustified were the allegations of bias or partiality against the judge.

[8] On the issue that the judge was prejudiced when he struck off the case of OS No 24-94-98 on 26 August 1998 in which the advocate had sent another counsel on his behalf to represent him, the advocate was reckless as he did not even have the judge's grounds of decision when he sought to submit on the very same day that the judge was biased or partial. The grounds of decision was supplied days later which the advocate had, in this instance, seized upon as the grounds of decision to justify his allegations of bias or partiality.

[9] It was urgent and imperative to act immediately so as to arrest the erosion of public confidence in the administration of justice. It had already disrupted the proceedings in respect of three matters and would surely disrupt the other proceedings already fixed for hearing not only in the next two days but also in the future, unless the advocate was stopped from making the baseless allegations of bias or partiality.

[10] On the advocate's allegation that the matter was not proved beyond reasonable doubt, the facts were not in dispute and one indisputable consequence of an accusation of bias and partiality is the erosion of public confidence in the administration of justice. That was beyond any reasonable doubt.

[11] The advocate's letter of 17 August 1998 wherein the words of "strong likelihood of bias and partiality" were used and the Notes of Proceedings

of 26 August 1998 wherein the words of "real likelihood of bias or partiality" were used showed that those were allegations of bias, contrary to the advocate's allegations that he did not utter the words "allegations of bias" and others which the judge had mentioned.

[12] On the advocate's argument that based on the case of *Wee Choo Keong v. MBf Holdings Bhd & Anor*, the proceedings were invalid as there was no sealed order to support the finding of contempt, that case dealt with the issue of whether a party in contempt could be heard further unless and until he had purged his contempt. There was no statement in that case that supported the advocate's said proposition of law.

[13] The statement by the advocate that the parties must agree on dates of hearing before the court could fix a date for hearing was made either out of arrogance that he must be consulted on the date for hearing before it was fixed, or out of ignorance. The court did not have to consult any parties before fixing any matter for hearing. The dates are fixed not for the convenience of the parties or their lawyers but according to the calendars and schedules of the judicial officers.

[14] As for the contention of the advocate that a re-scheduling or adjournment of cases did not interfere with the administration of justice, it only went to show how little the advocate knew about the backlog of cases and the long wait that a case had to endure before it could be dealt with as a result of needless adjournments. As for the judge being a visiting judge in Miri, it should be obvious to the advocate that there was a locum and the matters in Miri needed urgent attention as each passing day would add to the backlog of cases.

[15] Quite apart from his misconception of how a court had to be managed, the advocate failed to see the erosion of public confidence his unjustified allegations of bias and partiality against a judge would cause. In any event, public confidence would be eroded if the adjournment of a case would result in the public, in civil trial cases, having to wait not years but more than a decade before they could be dealt with. Therefore, the advocate had failed to cast any doubt that his said allegations were not in contempt of court.

[16] In assessing sentence, the court must consider the complete lack of remorse on the part of the advocate. There is ample authority to state that the attitude of the contemnor during the contempt proceedings is a factor that the court should consider in assessing sentence. After having searched the entire record of the instant case and the related cases, the court was unable to find any material which might mitigate the

advocate's offence. Given the seriousness of the blatant and unrelenting contempt in this instance case, a mere fine would only have the perverse and unintended effect of trivialising it.

[A term of one month imprisonment imposed which would be stayed provided necessary documents for an appeal filed within time stipulated.]

Cases referred to:

Ambard v. Att-Gen For Trinidads & Tobago [1936] AC 322 ***(refd)***
Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd & Ors [1986] 2 CLJ 109 ***(foll)***
Anthony Ratos s/o Domingos Ratos v. City Specialist Sdn Bhd (Attorney General, Intervener) [1996] 3 MLJ 349 ***(refd)***
Attorney General & Ors v. Arthur Lee Meng Kuang [1987] 1 MLJ 206 ***(refd)***
Blackburn's case [1968] 2 QD 150 ***(refd)***
Balogh v. St Albans Crown Court [1975] QB 73 ***(refd)***
Chung Onn v. Wee Tian Peng [1996] 5 MLJ 521 ***(refd)***
Hock Hua Bank (Sabah) Bhd v. Yong Luk Thin & Ors [1995] 2 MLJ 213 ***(foll)***
Lawrie v. Roberts & Linton [1882] 4 Coup 606 ***(refd)***
Lee Lim Huat v. Yusuf Khan [1997] 2 MLJ ***(refd)***
Takang Timber Sdn Bhd v. The Government of Sarawak & SEDC ***(refd)***
Wee Choo Keong v. MBf Holdings Bhd & Anor [1993] 2 AMR 28 ***(refd)***
Wong Siew Ping v. Credit Corporation Malaysia Sdn Bhd & Anor ***(refd)***

Tai Choi Yu in person
For the Federal Attorney-General Chambers - Tun Abdul Majid Tun Hamzah
For the Sarawak Advocates Association - Jimmy Wee

Reported by Usha Thiagarajah

JUDGMENT

Ian HC Chin J:

Introduction

It is necessary to repeat here in some detail what I have set out in my finding that Mr. Tai Choi Yu has to answer to a charge of contempt of court. On 26 August 1998 four out of twenty-nine matters that were fixed for hearing before me in chambers had Tai Choi Yu, an advocate, ("the advocate") acting for one of the parties. The advocate after the receipt of the notice of the hearing of those matters had, in respect of one of them, wrote the following letter, *viz*.:

Tai Choi Yu & Co., Advocates

17th August 1998

The Senior Assistant Registrar,
[Etc…]

Dear Sir,

Re: Miri High Court Originating Motion No.25-03-96 (MR)
Yong Yeu Sin v. The Public Officer, District Office

We refer to the conversation this morning (Fairuz/Tai) and we refer to the above-captioned case fixed for hearing on the 26th August 1998 @ 9.00 a.m.

We shall be obliged if you will kindly re-schedule the above-captioned case on the ground that there is a strong likelihood of bias and partiality on the part of the intended presiding judge, Mr. Ian Chin Hon Chong. It is an open secret that the Mr. Chin had made many defamatory remarks on our Mr. Tai in his judgment in *Takang Timber Sdn Bhd v. The Government of Sarawak & Anor* in Suit No. MR. 26 of 1990. The said case has resulted in 3 appeals to the Court of Appeal pending hearing. It is our humble considered opinion that our client's interest in his pursuit for justice will be better served if his case be heard before another judge.

In the circumstances we shall be obliged if you will kindly fix the above-captioned case for hearing on another dated before another judge.

Thank you.

Yours faithfully,
[Signed]
C.Y. TAI
For MESSRS. TAI CHOI YU & CO.

Cc (1) The Honourable Mr. Justice Chong Siew Fai,
The Chief Judge, The High Court, Kuching.

(2) The State Attorney General
State Attorney-General Chambers
Tingkat 16, Wisma Bapa Malaysia,
Petra Jaya, 93502 Kuching.

The court did not reply to the letter, rightly so, because it would not be appropriate to decide on the matter without hearing all the parties.

I then began to sit on 26 August 1998 starting with those matters which were not contentious in order to avoid, as far as possible, lawyers having to wait a long time in court for orders which can be granted in a matter of minutes. The first of the matters handled by the advocate that came up for hearing that

morning was ORIGINATING SUMMONS NO. 24-94-98 (MR) (*Wong Siew Ping v. Credit Corporation Malaysia Sdn Bhd & Anor*.) where the advocate, acting for the plaintiff, had also written to the court by a letter of 17 August 1998 to ask for the matter to be re-scheduled and indicated there that counsel for the other party had no objection but with no allegations as those contained in the other letter, *supra*. The court also did not reply the letter. When this matter (Originating Summons No. 24-94-98 (MR)) was called, another counsel stood in for the advocate and requested an adjournment and referred to the letter whereupon I told counsel that there was no reason given for wanting an adjournment. I refused the adjournment and proceeded to hear the matter. The stand-in counsel was left with the unenviable task of having to reply why the originating summons should not be struck out as, learned counsel for the other party contended, it was wholly inappropriate. I upheld the submission and struck out the originating summons and I stated that I will give my reasons if there is an appeal.

It was when the second matter, Suit No. 22-17-96 (MR), came on that the advocate himself appeared. This is what happened as the following notes of proceedings show:

MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK AT MIRI
SUIT NO. 22-17-96(MR)

LEONG SIEW FUNG & 4 ORS … PLAINTIFFS

vs

LEONG SHAN NAM … DEFENDANT

Notes of Proceedings
In Chambers
26 August 1998
12.27 p.m.

Coram : Justice Ian H.C. Chin
For Plaintiffs : Florence Lam
For Defendant : Tai Choi Yu

Tai: If this court pleases I would like to apply for your lordship to be disqualified from hearing this case on the ground that there is a real likelihood of bias or impartiality. This is because your lordship has made many defamatory remarks against me both in my personal capacity and in my capacity as a fit and proper person to act as an advocate and solicitor. That case is case no. MR. 26 of 1990. That case is now presently under appeal to the Court of Appeal. Altogether there are three appeals to the Court of Appeal on that case and the

defamatory remarks contained in the said case are also the subject-matter of the appeals to the Court of Appeal. In the circumstances I humbly submit that it will be in the best interest on my client if your lordship disqualify yourself from hearing any of my cases until the Court of Appeal has decided on the said defamatory remarks made by your lordship against me. Secondly on this particular case there is also an appeal to the Court of Appeal and that this case cannot proceed until the Court of Appeal has decided on that appeal. Thirdly, I have on the 17 August 1998 written to the SAR Miri for adjournment of all my cases fixed for hearing before your lordship and to that we have not been accorded the courtesy of a reply and response in writing. Fourthly, I have in my letter dated 25 August addressed to Messrs Khoo & Co, cc to SAR, Miri, asked that Gabriel Kok to stand in on my behalf and I understand that your lordship to make a decision against him when he has no instruction to argue on our behalf. We feel that the decision in the earlier case 24-28-98 shows the real likelihood of bias or partiality in respect to your lordship handling of my cases. For these reasons, I must submit for all the cases before your lordship today I am unable to proceed.

12.35 a.m.

Court: Could you show me the part of the judgment, which is under appeal, where I am alleged to have said you are not " a fit and proper person to act as an advocate and solicitor".

Tai: There is a remark that I should be prosecuted for my action which I did as a lawyer and solicitor in respect to my referral to the Chief Minister of Sarawak. I do not have the judgment. I have also written letter to your lordship and letter to the Chief Justice of Malaysia and to Chief Judge Sabah & Sarawak showing clearly those portions of your judgment which were defamatory of me. I am sure your lordship must have a copy.

Court: There are still two other cases involving Mr. Tai, are you going to say the same thing

Tai: Yes, there are cases tomorrow and the day after also.

Court: In that case I will call the other counsel involved in the other cases. One other case is Originating Motion No. 25-03-96 (*Yong Yeu Sin v. The Public Officer, District Office*) and (*Lee Kuet Chin v. Tan Kok Sen & Anor.*)

Susan Gau: I am for the Respondent in Originating Motion No. 25-03-96 of which Mr. Tai is for the Applicant.

Lim Swee Huat: I am for the 1st Defendant in Originating Summons No. 24-05-96 of which Mr. Tai is for the Plaintiff.

Tai: I make the same submission as I made earlier.

Court: For the benefit of the two learned counsel who had just joined us, I wish to read to them what Mr. Tai had said in seeking to disqualify me from hearing the cases. [Court read the submission.].

Tai: As for the latter two cases, there are no other grounds for adjournment and disqualification.

12.55 p.m.

Court: I need time to consider what Mr. Tai has said and I therefore adjourn to 27 August 1998 at 9.00 a.m. and all counsel are requested to be present. The said three cases which I have mentioned are adjourned to 27 August 1998 at 9.00 a.m.

Justice Ian H.C. Chin

It will be noticed from the notes that another factor, other than those stated in the letter, had been advanced for my disqualification and that is my decision to strike out the said Originating Summons No. 24-94-98 (MR). It will be noticed also that the advocate referred to a letter which was written much earlier by the advocate and which I reproduce here for the purpose of appreciating the history of the matter, *viz*.:

Tai Choi Yu & Co., Advocates

20th October 1997

Mr. Ian Chin Hon Chong
The Tawau High Court
Tawau.

Dear Sir,

Re: Defamatory Remarks in Judgment in
Miri High Court Suit No. MR. 26 of 1990
Takang Timber Sdn Bhd vs. The Government of Sarawak & SEDC

DEFAMATORY REMARKS IN JUDGMENT

Your 90 page Judgment in the above-captioned Suit contained many defamatory remarks about me both as a person and in my professional capacity as a lawyer.

Particulars of at least 6 instances of defamation, *inter alia*, are enclosed herewith in the Annexure attached hereto and marked "A".

Apart from the aforesaid 6 instances of defamation you also made numerous innuendoes which are defamatory of me.

CHALLENGE TO WITHDRAW AND/OR WAIVE IMMUNITY

Though we have never met before the hearing of the above-captioned Suit you chose to throw down the gauntlet. I accept it honourably and whole-heartedly. Now it obliges me to challenge you to withdraw and/or waive your immunity and for you to consent to and to submit to the jurisdiction of the Malaysian Courts in order that the truth of the said defamatory remarks be legally adjudicated.

If you believe as the truth that your said defamatory remarks are innuendoes are justified then you should put your mouth to where your heart is and accept the said challenge. Otherwise, you should know where to shove it.

CAPACITIES OF PARTIES

The letter is written by me and addressed to you in our respective capacities as lawyers and not in any other official capacity whatsoever.

REDRESS & RESTITUTION

Please note that unless I receive a clear and unequivocal acceptance of the aforesaid withdrawal and/or waiver from you within the next 10 days I shall take such other steps as I deem necessary to obtain redress and restitution.

Yours faithfully,
[Signed]
C.Y. TAI
For MESSRS. TAI CHOI YU & CO.

[CC. TO Chief Justice, Chief Judge, all practising lawyers in Sabah & Sarawak and all law reports publishers in Malaysia.]

ANNEXURE "A"

PARTICULARS OF DEFAMATION

1. "Tai Choi Yu…..an advocate of 28 years standing…..is not a truthful witness,"

2. "Tai Choi Yu cuts a pathetic figure".

3. "He (Tai Choi Yu)…cared not for the truth".

4. "When he (Mr. Tai Choi Yu) behaved and argued as he did it leaves no doubt that he (Tai Choi Yu) was untruthful."

5. "His (Tai Choi Yu's) professional ethic was dangerously close to being compromised by his business pursuit as can be seen by his questionable

behavior in writing…….as an advocate….to the Chief Minister of Sarawak."

6. "The letter (Tai Choi Yu's letter to the said Chief Minister) contained a threat…….unnecessarily close to being an extortion or criminal intimidation as envisaged respectively by s. 383 or s.503 of the Penal Code."

What happened in that case, *Takang Timber Sdn Bhd v. The Government of Sarawak & SEDC*, was that the advocate had testified and in the end his testimony was the subject of submission by counsel acting for the opposite parties that he was not a truthful witness. It was an issue that I had to decide and the decision was in respect of the facts of that case and which issue I decided giving my reasons covering seven pages of the judgment. I will say no more about this case as it is pending in the Court of Appeal.

I did not respond to the letter because that came from the advocate who virtually owned the plaintiff company of that case and whose claim was dismissed by me after a trial in which the advocate testified for his company during the trial and the words in that letter were, in my view, that of an angry and unsuccessful litigant. My inaction was influenced by the case of *Lawrie v. Roberts & Linton* [1882] 4 Coup. 606 where it is said that disappointed litigants sometimes feel aggrieved and that some of them are ill-tempered and that they may say or write things which are foolish and reprehensible but that this kind of abuse will generally carry little weight nor will it do much harm to the administration of justice even though it may be expressed in less than respectful terms.

However, the latest allegations, which are advanced as grounds for my disqualification, assume a different complexion and dimension. They go beyond abusing the judge personally. The present allegations of bias are that because I have ruled unfavourably on his credibility in the said case in which he was a witness, I will now and in future cases in which he acts for a party be biased or partial against him and as a result will be also biased or partial against his client. The advocate is also saying that because I have ruled against his client in the matter I have earlier mentioned (in which the advocate had asked someone to stand in for him) that is evidence of my bias or partiality. Therefore, such an attitude of the advocate means it matters not whether the decision is in accordance with the law or evidence and that as long as a decision by me is against his client, it is perverse. In effect, the advocate is saying I have decided and will be deciding cases with no regard whatsoever for what the facts and laws are; that is, with no regard for the truth at all. What apparently provides the basis for this conclusion by the advocate is the fact that I have ruled against his credibility when he was a witness and I have

also ruled against his client in the said matter heard on 26 August. The advocate has also said other things which are not correct. It is not true for him to say that I have in the said judgment said that he is not a fit person to act as an advocate and solicitor nor is it true that I have said he should be prosecuted. But the advocate had, however, said that he had not had a copy of the judgment with him and I will therefore disregard those remarks. Another way of putting the matter is that, the advocate has sought to disqualify me on the ground that I will not be deciding the cases with regard to the evidence and the law, in other words, without regard to where the truth lies. Therefore the allegations are without any basis at all. Such allegations, in my view, have impaired and will impair public confidence in the administration of justice.

Generally the courts would be unwilling to treat criticisms of judges, in modern conditions, as being contempt of court unless they are disrespectful in tone or likely to interfere with the administration of justice (*Blackburn's case* [1968] 2 QD 150). After all, "Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." (*Ambard v. Att.-Gen. For Trinidads & Tobago* [1936] AC 322, p.335).

This case is different. It goes beyond that. The allegations have impaired and will impair the public confidence in the administration of justice because the advocate has said expressly and by implication that I will be deciding cases with no regard to the evidence and the law, in other words, without regard to where the truth lies. The advocate, as is said in *Hock Hua Bank (Sabah) Bhd v. Yong Luk Thin & Ors* [1995] 2 MLJ 213, 223, ought to have faith in the court's ability to decide the case upon the evidence and also as much faith in the ability of the Court of Appeal to intervene where a judge has decided a case otherwise than in accordance with the law and the evidence. In fact the Court of Appeal had in that case, p. 220, sounded the warning which the advocate had chosen to ignore:

> In my judgment, it is a most serious matter to allege bias against a judge whose sole function is to decide a case according to the evidence before him. I notice an unhealthy trend of late to allege bias too readily against a judicial arbiter on insufficient material. Nothing is capable of eroding public confidence in the judicial arm of the state than unwarranted and unfounded allegations of bias. It is therefore to be avoided at all costs, if necessary, by having resort to the power to punish for contempt.

In my view, what the advocate had said when seeking to disqualify me from hearing the cases was in contempt of the court. That is not the end of the matter. I agonised over whether to act summarily because on the one hand I must be careful not to use the power so as to degenerate it into an oppressive

or vindictive abuse of it. On the other hand if I do not act promptly the confidence of the public in the administration of justice will continue to be eroded since the advocate is inclined to act in similar manner in every matter in which he will be engaged and he will continue to tell his client that this court will not be deciding in accordance with the law or the evidence. I had balanced the two considerations very carefully and I was of the view that it was urgent and imperative to act at once.

Therefore, upon the premises, I found the advocate guilty of contempt of court by asserting, expressly and by implication, that I will not be deciding the cases with regard to the evidence and the law, that is, without regard to where the truth lies. That is an imputation of judicial misconduct with the intention of impairing the public confidence in the administration of justice.

I gave the advocate an opportunity to decide what representation he wished to make before imposing the penalty on him. For that purpose I fixed 25 September 1998 at 11.00 a.m. in the High Court in Miri, open court, to hear the advocate. For the purpose too, the advocate was ordered to attend court on the said date and time. The presence on that day of a representative each from the Federal Attorney-General Chambers and the Sarawak Advocates Association to act as *amicus curiae* was also requested.

The court, constituted by me, then sat on 25 September 1998 where for the benefit of Mr. Tai Choi Yu, I summarised the charge against him in this manner:

> the charge of contempt, for which you are here today to answer, consists of your alleging that the court, which I was and will be presiding, will be deciding on the cases without regard to the truth and will not be based on the facts and laws which allegation has and will have the effect of eroding the confidence of the public in the administration of justice. The facts supporting that finding of contempt is your assertion that since I have found you not to be a creditable witness in one case (Miri High Court Suit No. MR. 26 of 1990 - *Takang Timber Sdn Bhd vs. The Government of Sarawak & SEDC*) I will be bias or impartial against your client in whatever cases that you will be representing them.

Mr. Tai Choi Yu elected not to call any evidence but submitted that the court cannot act as I have done and that what he did cannot be in contempt of court. It is to those contentions that I will now address myself. This is the opportune moment to thank Mr. Tun Abdul Majid, Senior Federal Counsel, and Mr. Jimmy Wee, a representative of the Advocates Association of Sarawak who appeared at my invitation to assist the court.

Whether The Court Has Jurisdiction?

Mr. Tai Choi Yu had submitted at great length that the court has no jurisdiction to on its own motion initiate contempt proceedings and he referred to numerous authorities which I will not bother with because the relevant authority which Mr. Tai Choi Yu did not cite is *Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193, 196, where it is said:

> In this country, the need to protect the dignity and integrity of the Supreme Court and the High Courts is recognised by Article 126 of the Federal Constitution, and similar provision is repeated in section 13 of the Courts of Judicature Act 1964. Thus, unlike in England where there is no written Constitution, the jurisdiction of this Court to deal with contempt of itself is conferred by the supreme law of Malaysia. Until different rules are made under section 16 of the Courts of Judicature Act, the procedure for contempt proceedings in the Supreme Court is governed by Order 52 of the Rules of the High Court 1980 read with rule 4 of the Rules of the Supreme Court. In addition, the Court can adopt summary contempt procedure on its own motion in cases where it is urgent and imperative to act immediately against contumelious conduct committed during its proceedings. When the contempt is not committed in the face of the Court, as is the case alleged here, it is equally important that the dignity and integrity of the Court be protected and preserved, and in such cases the contempt proceedings may be initiated by motion either by the Attorney-General or any private party who has sufficient interest in the matter, or even by the Court itself, although in practice it seems unjust to expect the Court to protect itself by being both complainant and judge, save in the unlikely event of the Attorney-General or the appropriate private party declining to act.

Clearly then the court has such a jurisdiction to act in the manner I have done. This case also provides the answer to the contention of Mr. Tai Choi Yu that it was "scandalous, vexatious and frivolous to make the said **"Finding"** against him as the proper course, according to Mr. Tai Choi Yu, is for me to refer the matter to the disciplinary committee set up under the Sarawak Advocates Ordinance because irrespective of the existence of the said disciplinary committee, the High Court still has the power to deal with contempt on its own motion. It was also contended by Mr. Tai Choi Yu that the **"Finding"** is an abuse of the process of the court because it did not bear a registration number and a proper intitulement. That can be met with the answer that the process was on the court's own motion and it arose out of three matters which were cited. There is no law to require such motion to bear a registration number or intitulement. *Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd & Ors* is also the answer to the contention that the **"Finding"** is "*ultra vires* made without jurisdiction or power or in excess of jurisdiction or power".

I turn now to consider the contention that there was no contempt of court at all.

Whether It Was Contempt Of Court?

Mr. Tai Choi Yu contended that I was confused when I equated myself with the court and that consequently I have failed to appreciate that when he made the oral application to disqualify me, he was only seeking to disqualify me and not the court. This is what Mr. Tai Choi Yu said:

> At pp. 10 & 11 of the said **"Finding"** it seems that because of four (4) repetitions in the said **"Finding"** the guilt of Contempt of Court was perpetrated "by asserting, expressly and by implication, that **I** will not be deciding the cases with regard to the evidence and the law, that is, without regard to where the truth is and will continue to tell his client that **this Court** will not be deciding in accordance with the law or the evidence". The said judge continued: "That is an imputation of judicial misconduct with the intention of impairing the public confidence with the administration of justice".
>
> The said Judge had equated **"I"** with **"this Court"**; this is ambiguous and the said Judge is confused. The said oral application for disqualification is to disqualify the said judge only not the Court as the said Court can still be constituted by another judge. Wrong to say that by disqualifying the judge enable the party to choose the judge to hear the case: to disqualify and to choose are two (2) different things altogether; the party has the right to apply to disqualify the judge and whether the judge is disqualified is another matter but the party does not have the right to choose the judge because whoever sits as the judge is chosen for the party by the Court Registry or the Chief Judge. The said oral application for disqualification is to the said judge and not the Court.

It is clearly beyond argument that the word "court" used there is understood as the court that will be constituted by me. In any event, I am unable to see how that submission of Mr. Tai Chi Yu can constitute an answer to the charge that he had alleged that I will not be deciding cases in accordance with the facts and law and the truth.

It was then contended by Mr. Tai Choi Yu that the finding of imputation of judicial misconduct is a hypothetical evaluation or a conjecture because it has yet to take place and therefore it cannot be a contempt of the court. The relevant part of the written submission of Mr. Tai Choi Yu in this regard is in these terms:

> From the aforesaid what is the specific charge or offence being levelled against the alleged contemnor or accused? It is specific charge framed on the said oral application for disqualification in chambers or is the specific charge framed on the **"imputation of judicial misconduct with the intention of impairing**

> **the public confidence in the administration of justice?"** This is ambiguous because no specific charge of the offence had been framed to warrant a rebuttal or reply. Suffice to say that the said judge's sense of logic is wrong because if he equates the said oral application to a **"an imputation of judicial misconduct"** he is referring to a **"misconduct"** that has yet to take place in the future otherwise what judicial misconduct is he referring to unless he concedes to judicial misconduct in the hearing of Suit No. MR.26 of 1990 then this is the reason why the Defendant is making the oral application to disqualify him. If the said Judge is referring to judicial misconduct will take place with the intention of impairing the public confidence in the administration of justice? The said judges said **"Finding"** was based on hypothetical evaluation and/or is a conjecture.

As for the contention that there was a lack of a specific charge, it has no merit because the details have been set out in the finding and again at the hearing before Mr. Tai Choi Yu proceeded to answer the charge. For convenience, the charge is set out here again:

> the charge of contempt, for which you are here today to answer, consists of your alleging that the court, which I was and will be presiding, will be deciding on the cases without regard to the truth and will not be based on the facts and laws which allegation has and will have the effect of eroding the confidence of the public in the administration of justice. The facts supporting that finding of contempt is your assertion that since I have found you not to be a creditable witness in one case (Miri High Court Suit No. MR. 26 of 1990 - *Takang Timber Sdn Bhd vs. The Government of Sarawak & SEDC*) I will be bias or impartial against your client in whatever cases that you will be representing them.

What Mr. Tai Choi Yu must, in answer to the charge, show to the court are (1) that factually he did not make the oral application to disqualify on the grounds stated, (2) that the application for disqualification cannot amount to an allegation that the court, which I was and will be presiding, will be deciding on the cases without regard to the truth and will not be based on the facts and laws and (3) that such allegation cannot have the effect of eroding the confidence of the public in the administration of justice. The fact that he did make the application cannot be disputed since the undisputed notes of proceedings substantiate that, which for ease of reference is again reproduced, *viz*.:

> Tai: If this court pleases I would like to apply for your lordship to be disqualified from hearing this case on the ground that there is a real likelihood of bias or impartiality. This is because your lordship has made many defamatory remarks against me both in my personal capacity and in my capacity as a fit and proper person to act as an advocate and solicitor. That case is case no. MR. 26 of 1990. That case is now presently under appeal to the Court of Appeal. Altogether

> there are three appeals to the Court of Appeal on that case and the defamatory remarks contain in the said case is also the subject-matter of the appeals to the Court of Appeal. In the circumstances I humbly submit that it will be in the best interest on my client if your lordship disqualify yourself from hearing any of my cases until the Court of Appeal has decided on the said defamatory remarks made by your lordship against me. Secondly on this particular case there is also an appeal to the Court of Appeal and that this case cannot proceed until the Court of Appeal has decided on that appeal. Thirdly, I have on the 17 August 1998 written to the SAR Miri for adjournment of all my cases fixed for hearing before your lordship and to that we have not been accorded the courtesy of a reply and response in writing. Fourthly, I have in my letter dated 25 August addressed to Messrs Khoo & Co, cc to SAR, Miri, asked that Gabriel Kok to stand in on my behalf and I understand that your lordship to make a decision against him when he has no instruction to argue on our behalf. We feel that the decision in the earlier case 24-28-98 show the real likelihood of bias or partiality in respect to your lordship handling of my cases. For these reasons, I must submit for all the case before your lordship today I am unable to proceed.

This takes me to point (2) as to whether the application for disqualification can amount to an allegation that the court, which I was and will be presiding, will be deciding on the cases without regard to the truth and will not be based on the facts and laws. Mr. Tai Choi Yu did not deal with this point but he appeared to me to argue that it is hypothetical or conjecture to say that it will have the effect of imputing judicial misconduct or of impairing the public confidence in the administration of justice. In my view it is not hypothetical nor conjecture but a natural consequence of any allegation of bias or impartiality against a judge that the public confidence in the administration of justice will be impaired. Support for this proposition can be found in a passage in *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors* [1995] 2 MLJ 213 CA, p. 220, where it is said:

> In my judgment, it is a most serious matter to allege bias against a judge whose sole function is to decide a case according to the evidence before him. I notice an unhealthy trend of late to allege bias too readily against a judicial arbiter on insufficient material. Nothing is capable of eroding public confidence in the judicial arm of the state than unwarranted and unfounded allegations of bias. It is therefore to be avoided at all costs, if necessary, by having resort to the power to punish for contempt.

That case, apart from what I have to say hereafter, is also the answer to the submission of Mr. Tai Choi Yu that I have acted unconstitutionally, oppressively or arbitrarily. What, then, are the justifications for saying that I will be biased or that there is a real likelihood of bias or partiality? This is the question which Mr. Tai Choi Yu must answer in view of the decision of

Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors. Mr. Tai Choi did refer to the case but he did not refer to the quoted passage and instead referred to the judgment of Gopal Sri Ram JCA, relating to a judge accepting criticism and to deciding on grounds not relied on by the parties and also to the decision of NH Chan JCA part of which said that there must be circumstances or facts which have been shown to exist which would lead a reasonable and fair-minded onlooker or which would have given reasonable ground for him to suspect that the case would not be decided according to the evidence. In his written submission Mr. Tai Choi Yu in order to justify the allegation of bias or partiality said this:

> I have applied for disqualification of High Court judges in about half a dozen cases all based on real likelihood of bias and has never been charged, tried and/or found guilty and/or convicted for contempt of court. In fact even in the Court of Appeal there were at least 2 instances in which I was asked by the Court of Appeal judges whether I would object to any of them hearing the appeals on real likelihood of bias. Quare: Are these judges guilty of contempt too? If the said judge's presumption and/or assumption of *"imputation"* and/or *"intention"* and/or *"allegations of bias"* exist just because the ground of *"real likelihood of bias"* was raised then they and many renoun English judges should be guilty of Contempt of Court. The said Judge's assumption and/or presumption is absurd and preposterous. The said "Finding" is obviously scandalous, vexatious and frivolous and humbly apply for it to be impeached discharged and/or set aside.

If by that submission Mr. Tai Choi Yu meant to contend that whatever the facts or circumstances of a case any application for disqualification on grounds of bias or partiality can never amount to a contempt of court, then I need only refer to the passage I have already quoted of *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors*. to say that such cannot be the law. As for his having previously made about a dozen such applications, if it was meant that because he had made such applications before he is entitled to make the present application, then and again, it is clearly against what *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors* has laid down and that is that there must be justification for making the application and that is not dependent on the number of previous applications. Mr. Tai Choi Yu had additionally submitted, to justify his allegation of real likelihood of bias or partiality, in the following words:

> In respect of my application that day, I stated very clearly that there was an appeal, actually 3 appeals, in respect of Mr 26-90 before the Court of Appeal and that one refers to those defamatory remarks refer to annexure a and therefore I apply to your lordship for disqualification because those remarks were the subject matter of appeal before Court of Appeal. I therefore, *bona fide* and respectfully, applied to disqualify your lordship and not hear cases until the Court of Appeal had heard these 3 appeals. I said that because the appeals were still pending the matter was *sub judice* and there will be a real likelihood if your

lordship continue to hear the cases. In respect to striking out of 24-94-98, I have earlier already written to the High Court seeking a re-schedule about 10 days before the hearing, I was advised by SAR that the High Court give me a reply before the date of the hearing. A reply never came. So on 25 September before hearing on 26 September I wrote to the court specifically stating that Mr. Kok was to stand in for me and to seek a re-scheduling of the said case. I did not give instruction in the letter to Mr. Kok to argue on the case. Letter copies to SAR Miri. I have expected that with my earlier letter and the letter dated 25 Sep would show that I *bona fide* applied for re-scheduling. But no reply was ever given to me by the court. If under conditions of normal courtesy a reply had been given to me stating application was not allowed I would have made formal application to the court for a rescheduling or even refer to a writ of *certiorari* so that I could achieve a rescheduling which I thought would be in the best interest of my client. In the said case there were two defendants and I was acting for the Plaintiff. The 1st Respondent filed a memorandum of appearance an subsequently filed an affidavit in opposition. With respect to 2nd respondent, filed appearance on 25 Aug, one day before day fixed for hearing. 2nd Defendant in fact already obtained a certificate of non-appearance. Since 2nd Defendant filed in appearance on 25 Aug he has yet to file his affidavit in opposition. In respect of the Plaintiff the Plaintiff chose to use the procedure by way of Originating Summons because at the time of filing the Plaintiff was of the opinion that the facts of the case was straight forward and there were documents which prove that the facts were straight forward. For this reason, this mode of commencement of civil proceeding was preferred by the Plaintiff. The Plaintiff and the filing of this mode of proceeding did not know what the stand of the defendants will be. The Plaintiff can only know after the defendants filed in their appearance if any and subsequently when they file in their affidavit of opposition. It is only after the Plaintiff had read the respective affidavits of opposition will the Plaintiff be able to know what is the stand of the two defendants in respect to the action. In respect of this proceeding if it is found that the affidavit in opposition disputes allegations of facts that become triable issues, order 28 r. 12, I think, allows the Originating Summons procedure to be converted to a writ procedure. However, in this case, your lordship without even waiting for the final of the affidavit in opposition by the 2nd Defendant and therefore without knowing the stand of the 2nd Defendant had struck out the said action. This to me shows as sign of real likelihood of bias. This is because in my humble opinion, the 2nd Defendant had yet to file his affidavit of opposition. In my humble opinion if your lordship has struck off the said action after it had the chance of studying and perusing the affidavit of 2nd Defendant, then I would agree that this striking off is permissible. By striking off the said action before the 2nd Defendant had filed affidavit in opposition in my humble opinion is premature. For that reason I came to the honest and *bona fide* opinion that there can be a real likelihood of bias. For that reason I cited that as one of those reasons.

It would appear from that submission Mr. Tai Choi Yu is saying that because of the alleged defamatory remarks in my judgment in the said Miri High Court Suit No. MR. 26 of 1990 (against which three appeals are pending in the Court

of Appeal and the matters are *sub judice*) there is a real likelihood of bias or partiality if I hear the cases for which my disqualification was sought. It will be recalled that Mr. Tai Choi Yu testified for his company in Miri High Court Suit No. MR. 26 of 1990 and that his testimony was the subject of submission by counsel acting for the opposite parties that he was not a truthful witness. It was an issue that I had to decide and the decision was in respect of the facts of that case and which issue I decided giving my reasons covering seven pages of the judgment. Putting Mr. Tai Choi Yu's argument on the best possible footing, which is to assume that the finding regarding him being an untruthful witness is totally wrong and therefore will be reversed by the Court of Appeal, does that mean (1) that I will in future be biased or partial against him and (2) that my bias or partiality against him will be "transferred" (for want of another better description) to his clients even though those cases have nothing to do with Miri High Court Suit No. MR. 26 of 1990. Mr. Tai Choi Yu did not demonstrate to the court how this is likely to be the case. The absurdity of such a contention can be illustrated when one considers criminal trials where the same witnesses, like the chemist or the investigations officer, will be appearing before the same judge again and again in different cases and where a judge may in some cases acclaim while in others discredit the same witnesses. How can it be argued or said that the judge will be biased or partial because of his previous findings? If a judge is to be disqualified in a case because he had found for or against a witness' credibility in unrelated previous cases, then there will be hardly be any judges left for trial of any criminal cases. The same chemist, like the chemist in Sabah, was testifying in many cases and if I am to be disqualified just because I had found him credible or not credible in previous cases, this means I can never hear a case again in which this witness will be involved even though it is an entirely different case. That surely cannot be the position. Therefore, my finding of credibility of a witness in one case cannot be ground for my disqualification in a different unrelated case in which the same person will appear as a witness. In the present cases in which my disqualification is sought, it is far more untenable from the example I have given because Mr. Tai Choi Yu is not a witness in these cases but only an advocate acting for the parties concerned. It is far more untenable also because even if he is going to be a witness in the present cases, I would still be qualified to hear the cases and rule on his credibility again guided by the facts and law of the present cases. What I have said goes to show how baseless and unjustified the allegation of bias or partiality against me is and how unjustified it is as a ground for my disqualification.

In the later part of the submission of Mr. Tai Choi Yu which I have just quoted, he persisted in maintaining that I was prejudiced by reference to my decision in striking out the case Originating Summons No. 24-94-98 in which

he acted for the plaintiff but did not appear. The case was struck off on 26 August for which the grounds of decision had yet to be given but Mr. Tai Choi Yu on the same day, 26 August, at the hearing of Suit No. 22-17-96(MR) just simply referred to that decision and said it showed my bias or partiality when the grounds of decision had not yet been given. The grounds of decision were supplied days later which he has now seized upon as the grounds of decision to justify his allegation of bias or partiality. It only goes to show how reckless he was when he on 26 August submitted that I was biased or partial when he sought to disqualify me and when he did not even have my grounds of decision yet.

Though Mr. Tai Choi Yu had submitted that even when the summary punishment is to be exercised it is only to be exercised when it is urgent and imperative to act immediately, citing *Balogh v. St Albans Crown Court* [1975] QB 73 but he did not elaborate why the present case is not one. Mr Tai Choi Yu had referred to the following passage:

> This power of summary punishment is a great power, but it is a necessary power. It is given so as to maintain the dignity and authority of the court and to ensure a fair trial. It is to be exercised by the judge of his own motion only when it is urgent and imperative to act immediately – so as to maintain the authority of the court – to prevent disorder – to enable witnesses to be free from fear – and jurors from being improperly influenced – and the like ...
>
> ... The reason is so that he should not appear to be both prosecutor and judge: for that is a role which does not become him well.

Why was it not urgent and imperative to act immediately? I can see nothing more urgent and imperative than to arrest the erosion of public confidence in the administration of justice. Apart from that, Mr. Tai Choi Yu had already said that it was not only the three matters, but others as well in the next two days in which my disqualification would be sought. It has already disrupted the proceedings in respect of the three matters and would surely disrupt the other proceedings already fixed for hearing not only in the next two days but in future cases as well unless he is stopped from making this baseless allegation of bias or partiality. It will be noticed that, before calling on him to answer the charge, I had in mind this requirement that it must be urgent and imperative before I acted and I was and still am of the view that it was.

There were several other points raised by Mr. Tai Choi Yu which are of no merits. One is that the matter had not been proved beyond reasonable doubt. The facts are not in dispute and one indisputable consequence of an accusation of bias and partiality is the erosion of public confidence in the administration of justice. That is beyond any reasonable doubt. It was also contended by Mr. Tai Choi Yu that he did not utter the words “allegations of bias” and others which I have mentioned. It will be recalled that I have reproduced his letter

of 17 August in which the words "strong likelihood of bias and partiality" are used and the notes of proceedings of 26 August where the words "real likelihood of bias or partiality are used" by Mr. Tai Choi Yu. I am unable to see how he can say those are not allegations of bias. It was then argued that the proceedings were invalid because there was no sealed order to support the finding of contempt, citing *Wee Choo Keong v. MBf Holdings Bhd & Anor.* [1993] 2 AMR 28. That case dealt with the issue of whether a party in contempt can be heard further unless and until he has purged his contempt and there is no statement there that supports Mr. Tai Choi Yu's said proposition of law. A copy of the finding containing my signature was given to Mr. Tai Choi Yu on the day it was read. There is also no substance in this contention. Given what I have said thus far, I also do not see any merit in the submission of Mr. Tai Choi Yu that the finding "was an imagination of the said judge without a proper trial".

Finally, Mr. Tai Choi Yu with regard to the question of whether it is a contempt of court, said this:

> 15. That the fixation of dates for the hearing of Court cases is an administrative decision to be decided within the Court Registry with the concurrence of the parties involved for a date or dates suitable and/or convenient to all parties and therefore the said fixation of dates is not a judicial decision and therefore it cannot form the basis of a contempt of Court proceedings or other judicial proceedings; ... Court Registry not a tribunal.
>
> 16. That the said judge is not the resident judge of Miri; he is the resident judge of Kuching and is a guest judge at Miri. Therefore an adjournment or a reschedule of any of the Court cases does not interfere with the administration of justice as the said Court cases will still be heard by the same Court;
>
> (1) Application to disqualify is too remote to be able to impair public confidence in the administration of justice.
>
> (2) Similarly an adjournment on a re-schedule of a case is too remote to be able to impair public confidence in the administration of justice.

The statement that the parties must agree on dates of hearing before the court can fix a date for hearing is either made out of arrogance, that he must be consulted on the date of hearing before it is fixed, or out of ignorance because the court does not have to consult any parties before fixing any matter for hearing. I cannot imagine how a court can function when it has to get the concurrence of every party, as suggested by Mr. Tai Choi Yu, before the matters can be fixed for hearing. The dates are fixed not for the convenience of the parties or their lawyers but according to the calendars and schedules of the judicial officers. As for the contention that a rescheduling or adjournment of cases does not interfere with the administration of justice, it only goes to show how little Mr. Tai Choi Yu knows about the causes of the

backlog of cases and the long wait that a case has to endure before it can be dealt with as a result of needless adjournment. Cases are filed with the court everyday and any case that is adjourned would add to the list which would not be the case if the cases are heard and disposed off instead of being adjourned. As for my being a visiting judge of Miri, it should be obvious to him that there was a locum and the matters in Miri needed urgent attention as each passing day would add to the backlog and the time a matter has to wait before it can be dealt with. Hence I was sent to Miri to help. In fact, Miri, as the existence of two High Courts there would support, needs two resident High Court judges because of the backlog of cases. At the time when it was decided to send me to Miri to help out, there were 86 civil cases waiting to be tried. Some of those cases have been waiting for trial since 1983. There were also numerous other civil and criminal matters that required attention. It does not require much common sense to see the havoc it would cause if there are needless applications for adjournments or re-scheduling. Quite apart from his misconception of how a court has to be managed, Mr. Tai Choi Yu has also failed to see the erosion of public confidence his unjustified allegation of bias and partiality against a judge would cause. In any event, how can you say that the public confidence will not be eroded if the adjournment of a case will result in the public, in civil trial cases, having to wait not years but more than a decade before they can be dealt with.

Therefore, Mr. Tai Choi Yu has failed to cast any doubt that his said allegation was in contempt of court. I turn now to the question of the penalty I should impose to which Mr. Tai Choi Yu did not bother to address the court but merely prayed that a stay be granted.

Sentence

I now turn to the unpleasant task of meting out the appropriate punishment on the advocate. In this task I am guided by precedent. Nonetheless I bear in mind the basic principle that a sentence is always personal to the offender and that the determining factor should be the facts of the case in question. In this regard, I quote here from the judgment of the Court of Appeal in the case of *Lee Lim Huat v. Yusuf Khan* [1997] 2 MLJ where an advocate was sentenced to one-month imprisonment for disobeying a court injunction:

> We are mindful of these and other matters raised by Counsel in support of the appeal against sentence. We have also given careful consideration to the authorities cited by him upon this part of the case. However, it is axiomatic that when it comes to sentence, subject to questions of policy, each case must be dealt with according to its own facts. It is therefore quite idle to suggest that because a defendant in another case received a lighter punishment, the appellant before us should also receive a like sentence. The principle that one set of facts are not precedent for another applies with equal force in matters of punishment.

I do not wish to repeat all that I said earlier in respect of the nature of the contempt committed by Mr. Tai Choi Yu. It would suffice if I say here that what he had done if condoned or trivialised, would impair public confidence in the integrity of our judiciary and consequently imperil the administration of justice in this country. It would also add to the delay.

In assessing sentence, I must perforce consider the complete lack of remorse on the part of the advocate. I observed that throughout the contempt proceedings he was completely unrepentant. This has to weigh on my decision on sentence apart from the gravity of the offence he has committed. There is ample authority to state that the attitude of the comtemnor during the contempt proceedings is a factor that the court should consider in assessing sentence. In *Attorney General & Ors v. Arthur Lee Meng Kuang* [1987] 1 MLJ 206, the comtemnor, an advocate wrote letters to three Supreme Court Judges alleging that the decision of the Supreme Court was biased. In passing sentence on the contemnor, Mohd Azmi SCJ said as follows:

> In assessing sentence, we agree that custodial sentence is not necessary in this particular case. On the other hand, we take into account the attitude of the advocate during the whole proceedings. As an officer of the court, he has not disclosed any sign of regret or remorse for what he has done and the damage he has inflicted on the dignity and integrity of the court. Although the application by the Attorney General and the appellants is for an order of committal, having regard to all the factors and circumstances of this case, we impose a fine of **$5,000 in default three months' imprisonment** which in purview is fair and adequate. In imposing the sentence we also take into consideration that the commission of the offence is the first in point of time against the Supreme Court, and the publication of the contumelious letters is limited to the Judicial fraternity. We wished that the advocate had tendered his apology before the hearing of this application and that he would plead for leniency after he is found guilty, to enable us to consider them as additional mitigating factors.

In *Anthony Ratos s/o Domingos Ratos v. City Specialist Sdn Bhd (Attorney General, Intervener)* [1996] 3 MLJ 349 High Court, an advocate and his client were held in contempt for initiating contempt proceedings against RK Nathan JC who struck out his petition. They were called to show cause why they should not be committed to civil prison for contempt. Both contemnors apologised and pleaded leniency. The Attorney General intervened and submitted that custodial sentence should only be imposed in cases where the contemnor had been unrepentant throughout. KL Rekhraj JC said that in view of the intervention of the Attorney General and special circumstances shown, justice will be tempered with mercy and a sentence of fine only of RM10,000 was imposed.

In the case of *Chung Onn v. Wee Tian Peng* [1996] 5 MLJ 521, the contemnor was an advocate who was found guilty of contempt in ignoring a court order

in aiding and abetting one Chan Ah Kaw in presenting the transfer of one property. The advocate tendered an unqualified apology and pleaded for leniency. Low Hop Bing J in sentencing the contemnor to a fine of RM7,000 said as follows:

> The respondent through his affidavit tendered an unqualified apology to this court and pleaded for leniency. This is one of the mitigating factors which the court may take into consideration in imposing a proper sentence. This is the approach adopted by the then Supreme Court in *A-G v. Arthur Lee Meng Kuang* [1987] 1 MLJ 206, where it was observed as follows at p 210:
>
> > … We wished that the advocate had tendered his apology before the hearing of this application and that he would plead for leniency after he is found guilty, to enable us to consider them as additional mitigating factors.
>
> In India, the same judicial approach was adopted in which an apology was also given due consideration (see *Ramnikal v. Pramlal AIR* 1952 Kutch 74 and *MY Shareef v. Hon Judges of the Nagpur High Court* AIR 1955 SC 19).

Although Mr. Tai Choi Yu chose not to make any representation in respect of sentence, I have searched the entire record of this case and the related cases for any material which might mitigate his offence. I regret that I have not been able to find any. At best it can only be said that he was emotional and permitted the enormous financial loss he suffered as a result of failed litigation to cloud his better judgment and affect his paramount duty as an officer of the court.

I agonised over whether to impose a mere fine in this case. However, given the seriousness of the blatant and unrelenting contempt in this case, which was in the face of the court as well, I think that a mere fine would only have the perverse and unintended effect of trivialising it. In the circumstances, I sentence the advocate, Mr. Tai Choi Yu to a term of one month imprisonment which sentence I will stay provided that he shall file the documents necessary for an appeal within the time stipulated by the relevant rules failing which the warrant of committal shall issue for his committal to prison.

I wish to record my appreciation to Mr. Jimmy Wee for the Sarawak Advocates Association whose submission I have covered in my judgment though I did not make any pointed reference.